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RE: Docket No. FV03-925-1PR
Federal Register Vol.71, No. 132, Page 39019
Grapes Grown in a Designated Area of Southeastern California and Imported
Table Grapes; Extension of Comment Period on Changing Regulatory Periods

**ASOEX SUPPLEMENTARY COMMENTS IN OPPOSITION TO PROPOSED
CHANGE OF THE BEGINNING EFFECTIVE DATE OF MARKETING ORDER
925 AND IMPORT REGULATION NO. 4 TO APRIL 1 AND IN SUPPORT OF
ASOEX PROPOSAL TO PERMANENTLY CHANGE THE BEGINNING
EFFECTIVE DATE TO MAY 1 FOR BOTH REGULATIONS**

Dear Docket Clerk:

The Asociación de Exportadores de Chile (ASOEX), also known as the Chilean Exporters Association submits these supplementary comments in opposition to the above-referenced Proposed Rule to change the beginning and ending effective dates of Table Grape Marketing Order 925 (Marketing Order) and the companion Table Grape Import Regulation 4 (Import Regulation) to April 1 and in support of ASOEX's proposal to permanently change both effective dates to May 1. ASOEX submits as attachments to these comments updates to Phase I and Phase II studies prepared by Capital Trade based on additional data from the 2005-2006 Chilean shipping season.

As a preliminary matter, ASOEX wishes to express its appreciation to USDA/AMS for reopening and extending the comment period which will afford ASOEX

and other interested parties an opportunity to review and comment on data submitted in support of the proposed April 1 date that had been withheld during the initial comment period. The extended comment period will also enable ASEOX to supplement its previously filed comments with data based on the most recent shipping season data, which the agency must consider in making any changes to the regulatory dates. Finally, the extended comment period will enable ASOEX to address certain statements made by the proponents of the April 1 date in their previous filings.

In summary, as the attached supplementary studies show, data from the 2005-2006 season corroborate the findings of the Alston and Capital Trade reports previously submitted. The data provides no economically sound basis for advancing the beginning effective date of the marketing order and import regulation to April 1. On the contrary, the data reveals compelling economic reasons for permanently changing the beginning effective dates for both regulations to May 1. The data submitted and relied upon by the proponents of the April 1 date does not differ in any material respect from the data reviewed and used in the Alston and Capital Trade reports.

The remainder of these comments will address and rebut, briefly, certain statements made by the proponents of the April 1 date. Those statements are contained in the November 28, 2005 comments submitted by the California Desert Grape Administrative Committee (CDGAC) and one comment in the November 28, 2005 submission by the Desert Grape Growers League of California (DGLC).

REBUTTAL OF CDGAC COMMENTS

CDGAC Comment: "The proposed rule is not designed to limit imports but it will ensure that future imports will not contravene the intent of the table grape marketing order."

ASOEX Rebuttal: The statement contains two parts, the first being patently false and the second based on an incorrect premise as to the proper intent or purpose of the table grape marketing order. Patently false is the statement that the proposed April 1 date is not designed to limit imports. Clearly, the April 1 date is designed to limit imports by imposing restrictive marketing order requirements that will either prevent shipment or prevent receipt of substantial quantities of Chilean table grapes for the period from April 1 to April 20.

The second part of the statement assumes, without any competent data support, that Chilean grapes shipped prior to April 20 are in actual and significant marketplace competition with Coachella grapes. The Capital Trade studies and the Alston analysis clearly shows that such is not the case. Therefore, the proposed change of the date from April 20 to April 1 “ensures” a solution to a problem that does not exist.

CDGAC Comment: “The Committee also supports changing the August 15 date of the marketing order period to July 10 since a zero to de minimus amount of the desert grape harvesting and marketing takes place after July 10.”

ASOEX Rebuttal: What CDGAC proposes for the end of its season cannot be reconciled on any rational basis with what CDGAC proposed for the beginning of its season. At the beginning, CDGAC wants in place marketing order restrictions a month or more before anything but de minimus quantities are available. At the end of its season, CDGAC wants its growers unencumbered by marketing order restrictions to ease the path into the market place. CDGAC also admits (as the data clearly shows) that **“No Chilean table grapes are affected by this change as most Chilean shipments end by early to mid-May.”** CDGAC thus concedes the central and compelling fact that makes it unnecessary for an import regulation to be in effect before May 1.

CDGAC Comment: "The Committee notes that Coachella table grapes and any grapes imported into California are also covered by a year-round state grade and quality standard ..."

ASOEX Rebuttal: The existence of a year-round state grade and quality standard is largely irrelevant in today's table grape market. As noted in ASOEX's previously submitted comments, every major grocery market chain has its own buying specifications for table grapes. For some quality and condition standards, the buying specifications may be more stringent or less stringent than the marketing order standards. The buying specifications, however, are always a more current and better reflection of consumer demand, being driven by market forces, than the standards imposed by the marketing and import regulation orders. Those buying specifications, unlike the regulations, operate evenhandedly for imports and domestic production and, unlike the regulations, operate completely independently of the control of importers and domestic growers.

CDGAC Comment: "... a review of table grapes inspected at [the port of Philadelphia] for the last six years indicates that failure rates from grapes being voluntarily inspected in early April through April 19 have ranged from 42% to 87%."

ASOEX Rebuttal: The raw statistical numbers, even if they could be shown to be accurate, are meaningless. CDGAC has failed to show that any of the "failed" grapes actually went into the U.S. wholesale market, or if they did go to market, that the sale of the "failed" quantities constituted a material percentage of the fruit in the market or had any effect at all on prices for either domestic or imported product. Further, the statistics do not reveal whether the failures resulted from shatter (a standard of significantly less importance to the consumer and retailers than in the past given current packaging practices) or from low sugar, a defect that both retailers

and consumers consider to be high in importance. As noted in ASOEX's earlier comments, Chilean grapes are consistently higher in sugar than the current marketing order requirements, and generally higher in sugar than early Coachella shipments.

CDGAC Comment: "While the higher quality grape would bring a better price for the importer, the cost to the consumer would be minimal because retail stores will not be required to impose a higher cost on the consumer to make up for lost or reduced retail sales as a result of discarded grapes."

ASOEX Rebuttal: CDGAC has not submitted any data to support the comment. Further, the comment ignores the actual operation of the market. If imported grapes are received at a retailer's warehouse that do not meet buyer specifications, the buyer generally requires a price adjustment which covers shrinkage. More often, grapes that do not meet buyer specifications go to a secondary auction market. Those grapes are not in direct competition with the retail chain market and, generally, do not affect prices in the retail chain market.

CDGAC Comment: Evidence that uninspected imported table grapes are in U.S. commerce in the U.S. after the effective date period is verified through data of the Agricultural Marketing Service Market News reports, the California Table Grape Commission Activity Reports, EXIMFRUIT and through various newspaper articles.

ASOEX Rebuttal: These various anecdotal reports are summarized in a memorandum authored by Edmond Missiaen, Attachment G to the CDGAC Comments. Mr. Missiaen attempts to show that Chilean grapes entered before April 20 compete directly with grapes from the Coachella Valley. The report partly refutes its own conclusion. The terminal market reports do not show the same grape varieties from Chile and Coachella in the market at the same time. Nothing in the report even

attempts to analyze the price effects of the availability of Chilean varieties on the varieties from Coachella. As noted in the Phase I and Phase II Update Reports from Capital Trade:

Our analysis does not dispute the factual finding of Dr. Missiaen that grape imports from Chile entered before April 20th continue to be shipped into the market after that date, with some competitive overlap with early season Coachella table grapes, and supply-side effects on price and Coachella grape revenue. However, as discussed in our January 25th report (Part III), any adverse price effects from this competitive overlap must be associated with consumers' reaction to demonstrated poor quality of Chilean grapes having adverse demand-side effects on Coachella grapes. Dr. Missiaen provided **no** evidence in his analysis that Chilean grapes entering the U.S. market after April 20th had such adverse effects through this mechanism. Implicit in his analysis is that non-inspected grapes from Chile are of lower-quality, but he provides no support for this inference. In contrast, the updated statistical analysis contained in this report continues to support a finding that any adverse effects on Coachella grape prices and revenue are only supply-side related, with no additional adverse effects through a reduction in demand for Coachella grapes owing to consumers' experience with poor-quality Chilean grapes at retail.

September 11, 2006 Update at p. 9. Exhibits A and B attached.

REBUTTAL OF DGLC COMMENT

DGLC Comment: "In 1987 when the effective date of the table grape marketing order was changed, there were 88 growers, 25 handlers/shippers and the acreage was 18,815. This year, the number of table grape producers is 40, the number of handlers/shippers, 18, and there are approximately 8,578 acres of table grapes under the marketing order jurisdiction. From 1987 to 2005, this equates to a 45% reduction in the number of growers and a 55% reduction in acreage....Over the years, the industry has been severely hurt because of the tremendous increase of Chilean table grape imports during the months of March and April, a significant number of which had quality problems that reduced the consumer's interest at the beginning of our domestic harvesting season and which resulted in severe economic losses which forced many growers out of business."

ASOEX Rebuttal: No studies or data have been submitted by DGLC that rationally connects the decline in acreage and production in Coachella to so-called quality problems of Chilean grapes. A much more likely explanation is the rapidly rising land values in the Coachella Valley, other rising costs of production and direct competition from Mexico. The high prices that the land in the Coachella Valley commands has resulted in 4,000 to 5,000 acres of farmland being taken out of production in the Coachella Valley in the last year to real estate. "There has been the biggest frenzy in land turnover in the last year than we've ever seen." --- Jeff Percy, President of Desert Mist Farms. *The Produce News*, April 24, 2006, p.34 "The Coachella Valley should deliver 5.5 million boxes this season, down about 10% from last season. Housing developers have driven land prices so high that growers cannot afford to expand acreage." --- Dave Clyde, sales manager for Stevco Inc. *The Packer*, June 12, 2006, p.A1. The Capital Trade and Alston reports have very clearly shown that Chilean imports have an insignificant impact on Coachella prices.

The CDGAC and DGLC comments both rely very heavily on anecdotal reports rather than systematic and rigorous analysis of the available data. To the extent that such anecdotal observations should be given any weight, USDA/AMS should pay attention to what Coachella growers have been saying about the 2005-2006 season. The Desert Sun, a Coachella Valley newspaper, gave this account:

**Grape growers grinning
Season's harvest, while not as early as last year's, still
hailed as sweet success**
Erica Solvig
The Desert Sun
July 24, 2005

Though Coachella Valley table grape distributors didn't have the early start to dominate the market like they did last year, local growers are still praising this year's harvest as one of the best.

Early figures show that despite a slightly later start than previous harvests, the roughly 12,000 acres of fields in the valley produced nearly 7.4 million 18-pound boxes of grapes.

The strong showing - nearly matching last year's much-praised harvest - comes at a time when grape growers in Mexico and Chile continue to tap into the market of the valley's most valuable crop.

"It was a very successful grape season for the Coachella Valley," Sun World International spokesman David Marguleas said of the two-month harvest that ended this week. "The Mexican crop was quite a bit larger than last year. But it was spread out more evenly than we had anticipated. There was orderly flow of fruit in the marketplace."

Table grapes are a \$112 million industry for Riverside County, according to the county's Agricultural Commissioner's Office. Here in the Coachella Valley, Flame Seedless grapes generate nearly \$64 million for the local economy.

The success has helped propel agriculture to the second-largest business in the valley, in terms of dollars, coming in behind the prominent \$1 billion tourism industry.

Table grapes such as the ones grown here are intended to be eaten fresh and are not usually used for wine production.

The grape harvest, which starts in May and runs until mid-July, has been key for the Coachella Valley's survival since it was first settled by Europeans. Though there are no exact figures, it's estimated that upwards of 25,000 workers come from Arizona, the Imperial Valley and south of the border to pick the crop.

They beat the heat by starting to pick grapes in the early morning hours, clad in clothing head to toe to protect themselves from the vast number of bugs that fly about.

Bending over or on their knees, the workers get deep within the vine's limbs to snip the best of the crop. The fruit is then sent to grocery stores across the country, though a small percentage will be sent overseas.

Joe Mota, regional director for the Southern California United Farm Workers of America, says fewer people were hired this year than last year, mostly because growers didn't pump out large quantities of grapes early in the season like they did in 2004.

Last year, Mexican grapes weren't ready until June, so Coachella Valley growers shipped out more grapes in early May. The strategy let them set higher prices and generate more of a profit.

But this year, growers in Mexico started their harvest around the same time as Coachella Valley fields were ripening.

"Last year, we definitely got a jump on our competition," says Blaine Carian, vice president of Coachella-based Desert Fresh. "This year we were later than them, but they got an early rain that hurt them. But every year is different. It's not just one thing that makes a market or makes a good season."

Mexican grape fields produced more than 18 million, 18-pound boxes of grapes this year, a nearly 60 percent increase over the 11 million tabulated last year.

Growers there have been dipping into the grape market for years, according to Dustin Wiley, Riverside County assistant agricultural commissioner. Though the Coachella Valley fields are the first to ripen in the country, Mexico's harvest tends to overlap with ours in timing.

"You now have all those grapes coming in," Wiley said. "Quite a few years ago, they didn't have that competition so (Coachella Valley growers) did a little bit better."

Chilean grapes are usually harvested between December and March, Wiley said. The harvest season has just started for growers in California's mammoth Central Valley.

Local growers say they won't know until early next spring how next year's harvest will be. But many are hoping for yet another strong showing.

"We had as good of a season, if not better, than last year," Carian said. "I would sign up for 10 more just like it right now."

Growers in California outside of the Coachella district have long recognized the importance of a continuous year-round supply of table grapes for the growth of the industry. As Jim Howard, vice president of the California Table Grape Commission, described for the July 24, 2006 edition of *The Packer*, "Chile came in the mid-80's, so the guys with the late-season crop found this competition. But overall, the impact for the industry has been enormously beneficial. It put grapes on the retail shelf year-round. It's now not a seasonal item; it's now a staple." Mr. Howard, according to the article, went on to note that per-capita consumption of California grapes increased by nearly a pound once Chilean product was there to augment California production. We note that this robust correlation between the advent of continuous and reliable supply from Chile was studied and rigorously demonstrated in a report prepared for

the California Table Grape Commission by Dr. Julian Alston, Exhibit C pages v, 12, 25, 32, 33, 54, 55, 59 and 78 attached. Dr. Alston and his colleagues also prepared a peer review of the previously submitted Capital Trade studies and a critique of the absence of an economic rationale that would warrant an earlier beginning date for the Marketing Order 925 and the companion Table Grape Regulation 4, a report that appears as Exhibit 1 to the previously filed ASOEX comments.

CONCLUSION

For the reasons stated in ASOEX's comments and the Capital Trade and Alston reports submitted in support of those comments, USDA/AMS should decline to change the beginning effective date of Marketing Order 925 and Table Grape Import Regulation 4 to April 1 of each year. Instead, USDA/AMS should make May 1 of each year the permanent effective date.

Respectfully submitted,

Dated, this 11th of September, 2006.

By: 

David A. Holzworth
ASOEX General Counsel for the United States